

# OFFICE OF THE INFORMATION COMMISSIONER (QLD)

**Decision No. 96020**  
**Application S 155/93**

**Participants:**

KIERAN JOSEPH O'REILLY  
**Applicant**

QUEENSLAND POLICE SERVICE  
**Respondent**

## DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents of the former Special Branch of the Queensland Police Service, relating to the applicant - whether certain documents qualify for exemption under s.42(1)(b) of the *Freedom of Information Act 1992 Qld* - whether matter concerning the affairs of persons other than the applicant is exempt matter under s.44(1) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - refusal of access - names of organisations referred to in documents of the disbanded Special Branch - relevance, and application, of 'mosaic theory' in relation to police intelligence information - whether disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety - application of s.42(1)(f) of the *Freedom of Information Act 1992 Qld* - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons or property - application of s.42(1)(h) of the *Freedom of Information Act 1992 Qld*.

FREEDOM OF INFORMATION - respondent's refusal to confirm or deny the existence of documents, falling within the terms of the applicant's FOI access application, which post-date the winding-up of the Special Branch - whether such documents, if they existed, would contain exempt matter under s.42(1) of the *Freedom of Information Act 1992 Qld* - consideration of s.35 of the *Freedom of Information Act 1992 Qld*.

*Freedom of Information Act 1992 Qld* s.35, s.42(1), s.42(1)(b), s.42(1)(e), s.42(1)(f), s.42(1)(h), s.42(2), s.44(1), s.81

- Anderson and Australian Federal Police, Re* (1986) 4 AAR 414  
*Byrne and Gold Coast City Council, Re* (1994) 1 QAR 477  
*Cannon and Australian Quality Egg Farms Limited, Re* (1994) 1 QAR 491  
*"EST" and the Department of Family Services and Aboriginal and Islander Affairs, Re*  
(Information Commissioner Qld, Decision No. 95020, 30 June 1995, unreported)  
*Ewer and Australian Archives, Re* (1995) 38 ALD 789  
*Ferrier and Queensland Police Service, Re* (Information Commissioner Qld,  
Decision No. 96016, 19 August 1996, unreported)  
*McEniery and Medical Board of Queensland, Re* (1994) 1 QAR 349  
*McKnight and Australian Archives, Re* (1992) 28 ALD 95  
*Stewart and Department of Transport, Re* (1993) 1 QAR 227

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## DECISION

I vary the decision under review (being the decision made on behalf of the respondent by Assistant Commissioner G J Williams on 29 July 1993) with respect to the matter remaining in issue (identified at paragraph 3 of my accompanying reasons for decision) in that I find that:

- (a) folios 17 and 19 are exempt matter under s.42(1)(b) of the *Freedom of Information Act 1992* Qld;
- (b) the names and reference numbers of organisations deleted from folios 1, 4, 5, 7, 10, 14, 16, 18 and 20 are not exempt matter under the *Freedom of Information Act 1992* Qld; and
- (c) the balance of the matter remaining in issue is exempt matter under s.44(1) of the *Freedom of Information Act 1992* Qld.

Date of decision: 18 November 1996

.....  
F N ALBIETZ  
**INFORMATION COMMISSIONER**

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## **REASONS FOR DECISION**

### **Background**

1. The applicant seeks review of the respondent's decision to refuse him access, under the *Freedom of Information Act 1992 Qld* (the FOI Act), to a number of documents and parts of documents relating to him, which were created in the course of the operations of the former Special Branch of the respondent (which I will refer to as the "Special Branch documents"). The applicant also seeks review of the respondent's decision to neither confirm nor deny the existence of documents relating to him which may or may not have been created since the winding up of the Special Branch, in the course of the operations of the Counter-Terrorist Section (the CTS) of the respondent. This case is similar in many respects to *Re Ferrier and Queensland Police Service* (Information Commissioner Qld, Decision No. 96016, 19 August 1996, unreported).
2. Mr O'Reilly applied to the Queensland Police Service (the QPS) on 9 February 1993 for "*personal files, reports, letters of Special Branch or its successor*" and "*any other documentation held in relation to myself by the Queensland Police Service*". The initial decision on behalf of the QPS was made by Superintendent J B Doyle and communicated to the applicant's solicitor by letter dated 7 July 1993. Superintendent Doyle identified 27 folios of Special Branch documents as falling within the terms of Mr O'Reilly's FOI access application, and decided that full access should be given to 7 folios, that part access should be given to 18 folios, and that 2 folios were wholly exempt under the FOI Act. The exemption provisions relied upon were s.42(1)(b), s.42(1)(f), s.42(1)(h) and s.44(1) of the FOI Act. In addition, Superintendent Doyle invoked s.35 of the FOI Act to neither confirm nor deny the existence of any intelligence documents relating to the applicant, apart from the applicant's Special Branch file. By letter dated 13 July 1993, Mr O'Reilly sought internal review of Superintendent Doyle's decision. In his internal review decision dated 29 July 1993, Assistant Commissioner G J Williams affirmed Superintendent Doyle's decision.

By letter dated 17 August 1993, solicitors acting for Mr O'Reilly applied to me for review, under Part 5 of the FOI Act, of Assistant Commissioner Williams' decision.

3. Staff of my office obtained and examined the documents in issue in this external review, and made preliminary enquiries of the QPS in relation to a number of matters. Since the issues involved in this review were similar to those involved in the external review which resulted in my decision in *Re Ferrier*, and the solicitor for the applicant in each case was the same, I decided that the appropriate course of action was to issue my decision in *Re Ferrier* before progressing further with this external review. Since the publication of my decision in *Re Ferrier*, my office has consulted further with the QPS and the solicitor for Mr O'Reilly. In light of my reasons for decision in *Re Ferrier*, the QPS has agreed to the disclosure of some matter initially claimed to be exempt. The matter from the applicant's Special Branch file which remains in issue consists of the whole of folios 17 and 19, and matter deleted from folios 1-5, 7, 9-14, 16, 18, 20, 24 and 26.
4. By letter dated 6 September 1996, I expressed to the QPS my preliminary view that the names and QPS-assigned reference numbers of certain organisations did not appear to qualify for exemption under the FOI Act. The QPS did not accept my preliminary view and made a written submission in support of its position in that regard. An edited copy of that submission was provided to the solicitor for the applicant, together with my preliminary view that other parts of the respondent's decision under review were likely to be affirmed, for reasons similar to those which I gave in *Re Ferrier* for upholding a number of exemption claims made by the QPS in that case. The applicant's solicitor was invited to lodge evidence and submissions in support of the applicant's case, but indicated that the applicant did not wish to make any submissions.

### **Relevant provisions of the FOI Act**

5. The following provisions of the FOI Act are relevant to my decision:

#### ***Information as to existence of certain documents***

*35.(1) Nothing in this Act requires an agency or Minister to give information as to the existence or non-existence of a document containing matter that would be exempt matter under section 36, 37 or 42.*

*(2) If an application relates to a document that includes exempt matter under section 36, 37 or 42, the agency or Minister concerned may give written notice to the applicant—*

*(a) that the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or an official document of the Minister; but*

*(b) that, assuming the existence of the document, it would be an exempt document.*

*(3) If a notice is given under subsection (2)—*

*(a) section 34 applies as if the decision to give the notice were the decision on the application mentioned in that section; and*

- (b) *the decision to give the notice were a decision refusing access to the document because the document would, if it existed, be exempt.*

***Matter relating to law enforcement or public safety***

**42.(1)** *Matter is exempt matter if its disclosure could reasonably be expected to—*

...

- (b) *enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or*

...

- (e) *prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or*

- (f) *prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or*

...

- (h) *prejudice a system or procedure for the protection of persons, property or environment; ...*

***Matter affecting personal affairs***

**44.(1)** *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

**(2)** *Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.*

**Special Branch documents**

6. The Special Branch was a unit of the QPS disbanded in 1989, following recommendations of the Fitzgerald Inquiry. The function of the Special Branch was explained, and the recommendations of the Inquiry set out, in the following passages from the Fitzgerald Report (at pp.242-243):

*This Unit was established to gather intelligence on individuals or groups regarding threats to democratic government, peace and order including terrorism, espionage and subversive activity, whether that be criminal or political. This Commission reviewed data held by the Branch, and concluded that the intelligence gathering capacity of the Unit was limited, systems were out of*

*date, and that past rumours of politically inspired intelligence gathering on a wide scale could not be substantiated, (though basic information was obtained from all Parliamentarians to assist in the event of a threat). Other criminal intelligence held was in inaccessible manual form.*

*The major role of the Branch in recent years has been VIP protection and escort. There is no good reason why this function cannot in future be performed by the Witness Protection Unit of the Criminal Justice Commission. The intelligence responsibility of Special Branch could best be incorporated into a revised central information bureau for the Police Force.*

*The Special Branch is the Police Force's official ASIO liaison point for mutually agreed information exchange in terms of a formal but voluntary agreement between these two bodies. The detailed review of intelligence systems and needs within the Criminal Justice Commission and the Police Force will, however, establish the proper liaison point or points for the exchange of information with ASIO in future. Once this is clarified the Special Branch should be abolished.*

7. The documents containing the matter in issue were created by the QPS between 1983 and 1989. They comprise reports concerning rallies, protests and meetings held by various groups during that period, and information obtained in respect of various individuals and organisations in relation to those events. Much of the matter in issue consists of the names and personal details of individuals, and the names of organisations, recorded as being present at, or represented at, those events. Some of the matter in issue records the arrest of, and/or court appearances by, individuals. Mr O'Reilly is one of the persons named in the documents. He has already been given access to all matter specifically referring to him which is contained in the documents in issue, with the exception of the two documents claimed to be exempt in full (folios 17 and 19). I will deal with the matter remaining in issue in three groups.

#### **Documents which would disclose sources of information**

8. Folios 17 and 19 are records of information supplied to the Special Branch in 1986. The QPS contends that these folios are exempt, in whole, under s.42(1)(b) of the FOI Act. In *Re McEniery and Medical Board of Queensland* (1994) 1 QAR 349 at pp.356-357 (paragraph 16), I identified the following requirements which must be satisfied in order to establish that matter is exempt under s.42(1)(b) of the FOI Act:
- (a) there must exist a confidential source of information;
  - (b) the information which the confidential source has supplied (or is intended to supply) must relate to the enforcement or administration of the law; and
  - (c) disclosure of the matter in issue could reasonably be expected to—
    - (i) enable the existence of a confidential source of information to be ascertained; or
    - (ii) enable the identity of the confidential source of information to be ascertained.
9. A "confidential source of information", for the purposes of s.42(1)(b), is a person who supplies information on the understanding, express or implied, that his or her identity will remain confidential: see *Re McEniery* at p.358 (paragraphs 20-21). As to the indicia of an implied understanding that the identity of a source of information will be treated in confidence, see



*Re McEniery* at pp.361-364 (paragraphs 26-34) and p.371 (paragraph 50). Given the nature of the information recorded, and the circumstances of its supply to the Special Branch (as evidenced by the content of the folios themselves), I find that the information contained in folios 17 and 19 was supplied on the understanding that the identities of its sources would remain confidential.

10. I also consider that the information contained in folios 17 and 19 relates to the enforcement or administration of the law. The Special Branch was intended to perform a preventative law enforcement role. One of its key functions was to identify, and monitor the activities of, persons and organisations who might have intended to break the law, in an effort to prevent breaches of the law from occurring. To that end, it collected background 'intelligence' information, relevant to its ongoing monitoring role. The information contained in folios 17 and 19 is of that kind, and I find that the second requirement for exemption under s.42(1)(b) of the FOI Act is established.
11. The nature of the test inherent in the phrase "could reasonably be expected to", in s.42(1) of the FOI Act, is explained at paragraph 23 below. I am satisfied, from my examination of folios 17 and 19, that disclosure of the matter contained in folios 17 and 19 could reasonably be expected to enable the identity of the source(s) of information to be ascertained. I therefore consider that the third requirement of s.42(1)(b) is satisfied.
12. There is no public interest test incorporated into s.42(1)(b) of the FOI Act, unless one of the exceptions referred to in s.42(2) applies. There is nothing in the circumstances of this case, nor any material before me, that would suggest that s.42(2) applies. I therefore find that folios 17 and 19 are exempt matter under s.42(1)(b) of the FOI Act.

#### **Documents containing information about other individuals**

13. The QPS contends that information in a number of folios, which is about individuals other than Mr O'Reilly, is exempt from disclosure to Mr O'Reilly under s.44(1) of the FOI Act. The terms of s.44(1) are set out at paragraph 5 above. As to the meaning of the phrase "personal affairs of a person", see *Re Stewart and Department of Transport* (1993) 1 QAR 227 at p.249 and following. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.
14. The matter claimed to be exempt under s.44(1) consists of the names of numerous individuals, together with QPS reference numbers for them, in a context which makes it clear that their activities were considered worthy of attention by the Special Branch. It includes personal details such as home addresses and birth dates, along with indications that people had been arrested, and information about convictions and penalties imposed. All of the matter claimed to be exempt under s.44(1) relates solely to the affairs of persons other than Mr O'Reilly. There is no matter which can be said to relate to the shared personal affairs of Mr O'Reilly and other persons. The only connection between Mr O'Reilly and the other persons whose personal affairs are recorded in the matter in issue is that the other persons happened to be present at meetings and protests at which Mr O'Reilly was present, or that they were arrested, or had court action taken against them, in respect of those meetings or protests.
15. In my view, it is clear that all of the matter claimed by the QPS to be exempt under s.44(1) of the FOI Act is properly to be characterised as information concerning the personal affairs of persons other than Mr O'Reilly. The matter is therefore *prima facie* exempt from disclosure to Mr O'Reilly under s.44(1) of the FOI Act. The applicant has not referred me to any public interest considerations which favour the disclosure of any of the matter claimed to be exempt

under s.44(1), and I cannot identify any that would be sufficiently strong to outweigh the public interest in protecting the privacy of individuals mentioned in Special Branch records in the context described above. I therefore find this matter to be exempt under s.44(1) of the FOI Act.

### **Names of organisations**

16. The names, and QPS-assigned reference numbers, of certain organisations appear on folios 1, 4, 5, 7, 10, 14, 16, 18 and 20. The QPS contends that this matter is exempt matter under s.42(1)(f) and s.42(1)(h) of the FOI Act. The QPS has made a written submission in support of its contention that this matter is exempt. That part of the submission which is relevant to this issue (in the edited form in which the QPS agreed to its release to the applicant) is as follows:

*Perhaps now would be the time to discuss the so called "mosaic theory" or "theory of cumulative prejudice". In my view, this "mosaic theory" provides that a person or group of persons acting in concert can acquire or gather seemingly innocuous pieces of information, but, when analysed together with other information reveals the totality.*

*The Administrative Appeals Tribunal has consistently accepted the validity of this theory (Re Slater and Cox (Director-General, Australian Archives) (1988) 15 ALD 20 at 27; Re Robinson and Department of Foreign Affairs (1986) 11 ALN N48; Re Throssell and Australian Archives (1986) 10 ALD 403 at 406-7 (Throssell No. 1); Re Throssell and Department of Foreign Affairs (1987) 14 ALD 296 (Throssell No. 2) and Re McKnight and Australian Archives (1992) 28 ALD 95).*

*In Re McKnight (supra at 112) Deputy President Johnston of the AAT said:-*

*"In general terms, I do not regard the mosaic theory, otherwise described as a theory of "cumulative prejudice", to be discredited merely because those seeking to uphold it are not able to verify or identify the other circumstances which, when put with information to which access is sought, may reveal either a source of information or a particular method for collecting such information, or disclosure of the kind of circumstances which may be the subject of security analysis".*

*Whilst you have indicated that the effluxion of time can serve to diminish the potential for prejudice, I do not accept this particular view in this case. I agree it may in some cases, however, this is dependent upon a number of variables associated with each individual case. While the probative value of intelligence in relation to the individual may diminish, the concern is that the methodology used to gather and store the intelligence has not.*

*In summary then on this issue of names of groups or organisations, I do not agree with your preliminary view that the age of the documents and the information which has already been disclosed to the applicant, openly qualifies the disclosure of all the organisations' names contained within these particular folios to O'Reilly. Folio 004 may be an exception as the words ...*

*have previously been released twice within that folio to O'Reilly. ... It is my submission, that such disclosure ... could reasonably be expected to prejudice the maintenance and therefore, the effectiveness of the methodology used, ... to gather and store intelligence of this nature.*

...

*I do not accept your preliminary views in relation to the issue on Names of Groups or Organisations which appear in folios 001, 005, 007, 010, 014, 016, 018 and 020. The material contained in these documents is of a sensitive nature and if disclosed, would reveal lawful police methods, systems or procedures to gather information for intelligence purposes. The age of the documents and the information which has already been disclosed to the applicant, does not, in my view, openly qualify the disclosure of all of the organisations' names contained within these particular folios to O'Reilly. I agree Folio 004 may be an exception as the words ... have previously been released twice within that folio to O'Reilly.*

17. The deletions under consideration have been made from documents which (except in one instance) are now over 10 years old. All of these documents were created by the now defunct Special Branch. References to one organisation are more recent, the most recent being about 8 years old. However, given the amount of matter which has already been released to the applicant, I find that the applicant is in a position to identify the name of that organisation without further information being provided. Giving the applicant access to the deleted name will not disclose anything beyond what the applicant must already be able to ascertain from the information disclosed to him.

'Mosaic theory'

18. The QPS has relied on the 'mosaic theory', otherwise known as the 'theory of cumulative prejudice', citing a number of decisions of the Commonwealth Administrative Appeals Tribunal (the AAT). I have examined those decisions. I note that a number of them were confined to the review of whether a reasonable ground existed for the issue of a conclusive certificate by the Commonwealth Attorney-General, rather than review of the merits of a decision refusing access.
19. A simple explanation/illustration of the mosaic theory appears in the decision of Deputy President Hall in *Re Anderson and Australian Federal Police* (1986) 4 AAR 414. At page 424, Deputy President Hall said:

*A document may disclose methods or procedures either by specifically referring to or describing them or by providing information from the nature of which the methods or procedures employed may be capable of being inferred. Thus, the disclosure of a document containing information that, on the face of it, is purely factual, may nevertheless be information known only to a chosen few members of a particular group. To reveal that information, may disclose the existence or identify a confidential source of information in relation to the enforcement or administration of the law. It may equally serve to confirm what may otherwise only be suspected, namely the methods or procedures for preventing or detecting possible breaches or evasions of the law employed by the police in order to meet a perceived threat.*

20. An example of the type of evidence used to support a claim that the mosaic theory applies in a particular case can be found in *Re Ewer and Australian Archives* (1995) 38 ALD 789, at pp.789-790 (paragraph 12):

*In relation to the particular documents Mr Brown said in his affidavit:*

"para 19 In my opinion, it is likely that persons having close association with the Communist Party of Australia and thus having knowledge of its activities and many of its members, would have little trouble in identifying ASIO's confidential sources and methods of operating should the Documents be made available to them. As an example, release of confidential source reports, even with the names or source symbols deleted, could, by application of mosaic analysis process, provide sufficient clues to the identity or existence of a confidential source of information.

para 20 In particular, mosaic analysis could be applied in the following ways. The release of folios ... would disclose the fact that the agent was a participant or present at a political/cultural occasion at which there were few other persons present. Each of these documents contains information drawn from material provided by a confidential source or an agent and my examination of the original material in each case confirms my conclusion that the release of the documents would tend to identify the source or agent concerned, by disclosing either the fact of the source's or agent's membership of a small political or political/cultural group, or attendance at a small meeting associated with, or seen to be associated with, the Communist Party of Australia.

para 21 Folios ... contain information in relation to documents or copies of documents obtained by sources or agents. Because of the number of documents involved and the fact that a very small number of people would have been in a position to pass them to ASIO, release of the documents would be likely to lead to the identification of the particular source concerned. In each case, disclosure of the fact that ASIO had the information contained in the relevant record would point to the identity of the relevant source or agent."

21. In my view, references to the possibility of mosaic analysis do no more than draw to the attention of the decision-maker the fact that disclosure of the information in issue in a particular case should not necessarily be viewed in isolation. It points to the possibility that, in certain cases, disclosure of a piece of information in issue, when combined with other available information, could enable the deduction of further information, the disclosure of which would be contrary to one of the public interests which the exemption provisions in the FOI Act are designed to protect.
22. It must be borne in mind that the mosaic theory does not give rise to any separate exemption and can only be used to establish a factual basis for satisfaction of one of the exemption provisions within the FOI Act. In this case, the QPS has only claimed that the names and reference numbers of organisations, which it has deleted from the folios in issue, comprise exempt matter under s.42(1)(f) and s.42(1)(h) of the FOI Act. In order to find that this matter

is exempt matter, I must be satisfied that prejudice of the kind specified in s.42(1)(f) or s.42(1)(h) could reasonably be expected to follow from disclosure of the matter in issue. Pursuant to s.81 of the FOI Act, the onus is on the QPS to establish a reasonable basis for expecting prejudice, of the kind specified in s.42(1)(f) or s.42(1)(h), to follow from disclosure of the matter in issue.

23. The correct approach to the application of the phrase "could reasonably be expected to" is explained in *Re Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at p.515 (paragraphs 62-63). The test embodied in that phrase calls for the decision-maker to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural expectations) and expectations which are reasonably based, i.e., expectations for the occurrence of which real and substantial grounds exist.
24. I note that in both *Re McKnight and Australian Archives* (1992) 28 ALD 95 and *Re Ewer* there was an indication that "a degree of speculation" is acceptable in making a finding relating to the application of the mosaic theory. Both the words "reasonable expectation" and "speculation" connote the formation of a view of what may happen in the future. However, the terms call for differing degrees of likelihood. As can be seen above, I have used the word "speculative" as an indication of a degree of likelihood which would not satisfy the test inherent in the words "could reasonably be expected to". While I do not necessarily disagree with the general thrust of the statements made in *Re McKnight* and *Re Ewer* with respect to the mosaic theory, I would refrain from adopting the references to "speculation" in those decisions, as I consider it may lead to some confusion in the minds of users of the FOI Act about the degree of likelihood necessary to establish exemption.
25. I accept that, in an appropriate case, submissions and/or evidence could be lodged by an agency, which would form a basis for a finding that there is an expectation, for the occurrence of which real and substantial grounds exist, that disclosure of one piece of information in issue, when combined with other available information, could enable the deduction of further information, thereby occasioning prejudice of a kind specified in s.42(1)(f) or s.42(1)(h) of the FOI Act. However, I do not consider that such a finding could be made in the absence of a satisfactory explanation and/or satisfactory evidence from the respondent agency as to how that prejudice could reasonably be expected to follow from disclosure of the matter in issue. (It may be that it would be necessary for such explanation or evidence to be withheld from the applicant, in order to protect matter claimed to be exempt, but the onus lies on the agency to satisfy me that the matter in issue is exempt.)  
To the extent (if any) that following the course suggested in *Re McKnight* and *Re Ewer* would require me to accept speculation falling short of a reasonable expectation, I would respectfully decline to do so, since to do so would, in my opinion, be inconsistent with the test inherent in the language which the Queensland Parliament has chosen to employ in framing s.42(1) of the FOI Act, specifically the phrase "could reasonably be expected to".

#### Section 42(1)(f)

26. Turning to the individual exemption provisions relied upon by the QPS, the focus of s.42(1)(f) is on the maintenance or enforcement of a lawful method or procedure for protection of public safety. This is to be distinguished from protection of the "effectiveness" of methods or procedures, as to which see s.42(1)(e) and *Re Byrne and Gold Coast City Council* (1994) 1 QAR 477 at p.484, paragraph 20.

27. Some of the general methods and procedures of the CTS are set out in its Charter, which I discussed in *Re Ferrier* (at paragraphs 29-32). The QPS has not satisfied me that disclosure of the organisation names, or reference numbers, which have been deleted from the folios in issue, could reasonably be expected to prejudice in any way the maintenance or enforcement of a method or procedure for protecting public safety. The matter in issue is between 8 and 13 years old, and, as I have noted above, the names of certain organisations would already be obvious to the applicant from the matter which has been disclosed to him.
- (For example, I do not believe it could reasonably be asserted that the information disclosed in the opening paragraphs of folio 20 does not make obvious to Mr O'Reilly the name of the organisation which has been deleted from above those paragraphs.) Disclosure of the matter in issue would merely reveal the names of organisations which were subjects of interest to the now defunct Special Branch. The QPS has attempted to identify methods and procedures (for gathering and storing intelligence), the maintenance or enforcement of which might be prejudiced by disclosure of the names and references numbers, but I am unable to accept that there is any reasonable basis for expecting such prejudice. I would go so far as to say that, even if the methods and procedures now adopted by the CTS happen to be identical to those formerly adopted by the Special Branch (and I have no information as to whether this is the case), I can envisage no prejudice to their maintenance or enforcement by disclosure of the names and reference numbers of organisations that were subjects of interest to the Special Branch some 8 to 13 years ago.
28. Nor am I satisfied that there is any basis for the application of the mosaic theory. In this case, in order to succeed in its contentions, the QPS would have to place before me submissions and evidence sufficient to satisfy me of an expectation, for the occurrence of which real and substantial grounds exist, that disclosure of the organisation names and reference numbers, when combined with other available information, would enable the deduction of information prejudicial to the maintenance or enforcement of a lawful method or procedure for protecting public safety. The QPS has not discharged that burden.
29. I find that the names, and reference numbers, of organisations deleted from the folios listed at paragraph 16 above are not exempt matter under s.42(1)(f).

#### Section 42(1)(h)

30. Section 42(1)(h) requires me to consider whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment. In *Re Ferrier* (at paragraphs 27-36), I found that the intelligence gathering methods of the CTS form a sufficiently coherent, organised and comprehensive scheme to answer the description of a "system", and that the system clearly had the object of protecting persons or property, within the terms of s.42(1)(h). I further found that matter which would identify a number of organisations which were of continuing interest to the CTS in 1990, was exempt matter under s.42(1)(h). However, I noted (at paragraph 35) that the potential for prejudice would reduce over time (a proposition which appeared to have been tacitly accepted by the QPS in acknowledging to Ms Ferrier that she had in the past been a subject of interest to the Special Branch).
31. In this case, all the documents were created in the course of the activities of the Special Branch. They convey no information in relation to the activities of the CTS or any other part of the QPS. Just as matter released to Ms Ferrier and Mr O'Reilly by the QPS shows that those individuals were subjects of interest to the Special Branch, the disclosure of the names and reference numbers in issue would merely indicate that the organisations in question were

of interest to the Special Branch between 8 and 13 years ago. I have already indicated that, with regard to the organisation referred to in documents created in 1988 and 1989, Mr O'Reilly must be able to ascertain the identity of the organisation, given the matter which has already been released to him. I do not consider that the disclosure of the names and reference numbers of organisations, given the length of time which has passed and the fact that they relate solely to activities undertaken by the Special Branch, could reasonably be expected to prejudice in any way the system or procedures of the CTS for the protection of persons or property.

32. Again in relation to s.42(1)(h), I cannot see any basis for the application of the mosaic theory in this case. Disclosure of the names and reference numbers would merely indicate which organisations were of interest to the Special Branch some 8 to 13 years ago. The QPS has not put forward any argument or evidence sufficient to satisfy me of an expectation, for the occurrence of which real and substantial grounds exists, that disclosure of the organisation names and reference numbers, when combined with other available information, would enable the deduction of information prejudicial to a system or procedure for the protection of persons or property.
33. I therefore find that the names and reference numbers of the organisations deleted from the folios listed at paragraph 16 above are not exempt matter under s.42(1)(h) of the FOI Act.

**'Neither confirm nor deny' issue**

34. The QPS neither confirms nor denies the existence of any documents (falling within the terms of the applicant's FOI access application) which post-date the winding-up of the Special Branch. I discussed the application of s.35 of the FOI Act to documents which may or may not be held by the CTS at paragraphs 49-52 of my decision in *Re Ferrier*. I have adopted the procedures outlined in that case, and in *Re "EST" and the Department of Family Services and Aboriginal and Islander Affairs* (Information Commissioner Qld, Decision No. 95020, 30 June 1995, unreported) at paragraph 20 (the terms of which are quoted in *Re Ferrier* at paragraph 6), in considering the application of s.35 in this external review.
35. The matters referred to in paragraphs 50 and 51 of *Re Ferrier* are also directly relevant to the present case. In the circumstances of this case, I am satisfied that the QPS was entitled to exercise the discretion conferred by s.35 of the FOI Act to issue a response to the applicant's FOI access application which neither confirmed nor denied the existence of documents (falling within the terms of the applicant's FOI access application) which post-date the winding-up of the Special Branch.

**Conclusion**

36. In light of my findings above, it is appropriate that I vary the decision under review, so far as it concerns the matter remaining in issue in the Special Branch documents, by finding that:
- (a) folios 17 and 19 are exempt matter under s.42(1)(b) of the FOI Act;
  - (b) the names and reference numbers of organisations deleted from folios 1, 4, 5, 7, 10, 14, 16, 18 and 20 are not exempt matter under the FOI Act; and

- (c) the balance of the matter remaining in issue is exempt matter under s.44(1) of the FOI Act.

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F N ALBIETZ  
**INFORMATION COMMISSIONER**